IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR.

O R D E R

S.B. CIVIL WRIT PETITION NO. 3862/2001

RAM AVTAR & CO. THROUGH ITS PROPRIETOR
Vs.
IBP COMPANY LTD. & ANR.

Date: 13.08.2007.

HON'BLE MR. JUSTICE K.S. RATHORE

Mr. Kamlakar Sharma for the petitioner.
Mr. S. Kasliwal with
Mr. K. Verma for the respondents.

****

Brief facts of the case are that the petitioner is a proprietorship firm and Shri Ram Avatar is its sole Proprietor and is carrying business of sale of kerosene oil in the name of petitioner at 7-B, Bais Godown, Jaipur under the duly issued license by the District Supply Officer and the dealership given by the IBP Company. On 09.01.2001 Deputy Superintendent of Police (Intelligence), Anti Corruption Bureau, Jaipur lodged an FIR which was based on raid conducted in the house of Shri Ramavtar Goyal as well as the business premises of the petitioner firm by the Dy. SP, Anti Corruption Department, Rajasthan, Jaipur. During raid certain documents and samples have been seized. In the FIR it is alleged that the petitioner in conspiracy with the District Supply Officer and his subordinate

Enforcement Officers supplied less quantity of kerosene to the fair price shops and by making forged documents complete quantity of kerosene oil was shown as distributed, whereas in fact the kerosene has been changed from blue to white and then sold on higher price to factories and other institutions.

On the basis of the FIR lodged by the Anti Corruption Department, the DSO vide order dated 12.03.2001 cancelled the license of the petitioner and the IBP Company was also informed about the FIR and cancellation of license. After receipt of the information, the respondent IBP Company after issuing show cause notice terminated the dealership of the petitioner vide order impugned dated 28.06.2001.

The petitioner has challenged this termination order on the basis of order dated 16.02.2005 passed by the DSO, Jaipur which is filed by the petitioner along with the stay application and submits that this detailed order has been passed by the DSO pursuant to the order dated 03.11.2004 passed by the Special Court, Anti Corruption Cases and has restored the license of the petitioner.

The main contention of the petitioner is that since the respondent IBP Company has terminated the dealership of the petitioner on the basis of FIR lodged by the Anti Corruption Department and on the basis of the same, the DSO cancelled the license and since the

DSO has restored the license, therefore, now relying upon the order passed by the DSO, the respondent IBP Company should restore the dealership of the petitioner after recalling the termination order dated 28.06.2001.

It is also given out that the Anti Corruption has not filed challan pursuant to the FIR which was lodged in the year 2001 and since then it is pending and no case against the petitioner is made out. Even otherwise, the Anti Corruption Department has no right to search and lodge FIR against the petitioner as the petitioner is private company and proprietor firm.

In support of his submissions, learned counsel Mr. Kamlakar Sharma appearing on behalf of the petitioner placed reliance on the judgment rendered by this Court in the case of **M/s Pali Filling Station, Ramasia Vs. State of Rajasthan And Others, 1993(2) WLC (Raj.) 111.**

Per contra, learned counsel Mr. Kasliwal appearing for the respondents has raised preliminary objection regarding maintainability of the writ petition and submitted that a surprise raid was conducted by the Anti Corruption Department on the premises of SKO Agency and accordingly the DSO license was suspended for 60 days and it is clear that FIR was lodged against the petitioner and having knowledge of it, the IBP Company issued show cause notice dated 13/16.01.2001. The license was terminated by the DSO

vide order dated 12.03.2001 and thereafter show cause notice was also issued by the IBP company vide Annexure 13 dated 03.04.2001, in response to which the petitioner filed reply. Upon perusal of the reply so submitted by the petitioner, the respondent IBP Company terminated the dealership of the petitioner as the petitioner violated the terms of conditions bearing Clauses No. 7, 8, 10(a), 14, 15(a), 22(c), (f) and (g) and Clause 20 of the Dealership Agreement dated 10.11.1987.

Mr. Kasliwal also submits that this Court has no jurisdiction to entertain this writ petition in view of Clause 26 of the Agreement dated 10.11.1987, which reads as under:-

> "Clause 26. This agreement has been made in all respects in the local jurisdiction of and the payments thereunder shall be due and made in New Delhi unless otherwise directed by the Company. The courts in the city of New Delhi alone shall have jurisdiction to entertain any suit, application or other proceeding in respect of any claim or dispute arising under this agreement."

In support of his submissions, he placed reliance on the following judgments:-

(1)AIR 2002 SC 2402/ 2006(3) WLC 100.

(2)AIR 2002 Madras 396.

(3)AIR 2002 Orissa 29.

In these judgments it has categorically been held that once parties enter into agreement which provides a provision specifying place where, in event of dispute as to terms in agreement where same would be litigated- suit filed in place other than specified place- is not maintainable.

Further the writ petition is challenged on the ground that in the contractual matters the appropriate remedy to get the inter-se disputes settled is not the writ jurisdiction but must be settled according to principles of law of contract that is by way of adjudication through Civil Court and placed reliance on the following judgments:-

(1)2000(6) SCC 293

(2)1991(1) SCC 533

(3)AIR 2002 SC 206

Further the petitioner is merely licensee of IBP Company which is determinable in nature and in case of its termination, the petitioner at the most is entitled for compensation and to this effect the learned counsel for the respondents placed reliance on the judgments reported in 2002(4) WLC 41 and 1991(1) SCC 533.

He further submits that by way of this writ petition the petitioner is seeking specific performance

of the contract whereas it is settled law that specific performance of such contract is barred and in support of his submissions he placed reliance on the judgment reported in 2002(4) WLC 742.

The petitioner is seeking relief on the ground that the DSO, Jaipur vide its order dated 16.02.2005 has restored the license of the petitioner. The DSO has restored the license of the petitioner merely on the ground that even after lapse of four years, the Anti Corruption Department has not filed challan in the Court, but in remains undisputed that the case in pursuance of the FIR is pending against the petitioner. He further submits that the petitioner is not entitled for any benefit only because challan has not been filed.

I have heard rival submissions of the respective parties and have also gone through the relevant clauses of agreement, impugned order passed by the respondent IBP Company as well as the order passed by the District Supply Officer restoring the license of the petitioner as also the judgments referred by the learned counsel appearing for the respective parties.

It is not disputed that this writ petition has been filed against the IBP Company and General Manager (NR), IBP Company only as the DSO has restored the license of the petitioner vide order dated 16.02.2005 and pleaded that Anti Corruption Department has no

jurisdiction to raid on the premises of the petitioner, but neither the petitioner has challenged the action of the Anti Corruption Department nor impleaded the Anti Corruption Department through State as party in this writ petition.

Further, in the considered view of this Court if challan has not been filed for the last 6 years, the petitioner has remedy to redress his grievance to quash and set aside the FIR lodged by the Anti Corruption Department on frivolous grounds, but the petitioner has not opted to challenge the action of the Anti Corruption Department and also not challenged the FIR by way of filing any writ for quashing the same, therefore, in this writ petition no relief can be granted to the petitioner.

Further, as per the considered view, merely because the District Supply Officer has restored the license of the petitioner, the respondents cannot be forced to restore the dealership of the petitioner and withdraw the termination order as it is specifically pleaded on behalf of the respondents that the termination order has been passed by the respondents on account of breach of contract and looking to the prestige of the IBP Company, therefore, during pendency of the anti corruption case, the question of restoration of dealership does not arise. Further, as submitted by the respondents that the petitioner has

every right to avail the alternative remedy to challenge the termination order but the same has not been availed.

After having gone through the judgment referred by the learned counsel for the petitioner rendered in the case of **M/s Pali Filling Station, Ramasia (supra),** the ratio decided by this Court in the aforementioned case is not applicable to the facts and circumstances of the present case and in my considered view, the respondent IBP Company cannot be compelled to restore the dealership and recall the termination order. Thus, at this stage, I do not want to interfere with the impugned termination order dated 28.06.2001 passed by the respondent IBP Company.

For the detailed reasons as stated herein above, I find no merit in the writ petition.

Consequently, the writ petition fails and the same is hereby dismissed.

(K.S. RATHORE),J.

/KKC/